

HUSKY OIL COMPANY OF DELAWARE

IBLA 76-447

Decided August 11, 1976

Appeal from decisions of the Wyoming State Office, Bureau of Land Management, rejecting oil and gas lease offer W-53417.

Set aside and remanded.

1. Oil and Gas Leases: Generally -- Oil and Gas Leases: Lands Subject to -- Oil and Gas Leases: Noncompetitive Leases

Where an oil and gas lease offer is rejected because the land was received by the United States as part of a section 8, Taylor Grazing Act exchange, and the record does not indicate such an exchange took place the case will be remanded for consideration in light of the actual record.

APPEARANCES: James R. Learned, Esq., of Cheyenne, Wyoming, for appellant.

OPINION BY ADMINISTRATIVE JUDGE RITVO

The Husky Oil Company of Delaware has appealed from a decision of the Wyoming State Office dated December 22, 1975, which rejected its oil and gas lease offer for the stated reason that the applied for land conveyed to the United States under section 8 of the Taylor Grazing Act, 43 U.S.C. § 315g (1970), has not been restored to entry.

Appellant contends the decision is in error and the matter should be remanded for lease issuance because the lands are public lands open to oil and gas lease application and the United States has acknowledged its sovereignty over the lands and their status as public lands in accepting an application for a county road right-of-way and in classifying the lands for multiple use management.

[1] Appellant filed its noncompetitive oil and gas lease offer W-53417 on December 5, 1975, for an isolated 40-acre tract described as "Tract 70 SE 1/4 SE 1/4 (same subdivision under original survey Section 34), T. 53 N., R. 101 W., 6th P.M., Park County, Wyoming. There is nothing in the record to support the statement that the land had ever been conveyed to the United States under section 8 of the Taylor Grazing Act, supra, which authorizes the United States and the states to exchange lands.

However, we also note that there are several other entries on the public land records which may affect the status of the land for oil and gas leasing.

The record shows that this land was originally patented to the State of Wyoming in 1901 under section 4 of the Carey Act of August 18, 1894, 43 U.S.C. § 641 (1970). Subsequently, in 1954, the State of Wyoming relinquished all right, title and interest to this tract to the United States pursuant to the provisions of the Act of August 13, 1954, 68 Stat. 703. This act authorized the Secretary of the Interior to issue quitclaim deeds to the public land states for all lands patented to such states and for other lands segregated or improved or developed under the Carey Act, supra. In return the states relinquished to the United States those lands for which they did not seek to perfect a transfer. Section 4 of the Act required that: "The Secretary shall provide for the administration and disposition under the public-land laws of the lands quitclaimed or relinquished pursuant to this act." 1/ Such lands are not available for appropriation under the public land laws until specific provisions for opening them to disposition are made. Asa V. Perkes, 9 IBLA 363, 365, 80 I.D. 209, 210 (1973).

Further, the record also shows that Tract 70, as part of 387, 348 acres, was classified for multiple use management September 29, 1961, by P.L.O. Wyoming 15948, 34 F.R. 191, Oct. 4, 1969, pursuant to the Act of September 19, 1964, 43 U.S.C. §§ 1411-18 (1970). This classification order specifically provided:

* * * Publication of this notice has the effect of segregating the described lands from appropriation only under the agricultural land laws (43 U.S.C. Parts 7 and 9; 25 U.S.C. sec. 334) and from sales under section 2455 of the Revised Statutes (43 U.S.C. 1171) and the lands shall remain open to all other applicable forms of appropriation, including the mining and mineral leasing laws. * * *
[Emphasis added.]

1/ For an earlier statute to the same effect, see 43 U.S.C. § 644 (1970), and the regulation 43 CFR 2222.6-4 (1970) now deleted from the code. See 35 F.R. 3072.

Finally we also note the plat shows Tract 70 may be included within petroleum withdrawal and reservation 32 by Executive Order of June 22, 1915.

Since the decision rested upon an erroneous assumption and there are other factors to be considered, we believe the State Office should reexamine the matter.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is set aside and the case is remanded for further proceedings consistent herewith.

Martin Ritvo
Administrative Judge

We concur:

Joan B. Thompson
Administrative Judge

Douglas E. Henriques
Administrative Judge

